

Order

**Michigan Supreme Court
Lansing, Michigan**

December 28, 2006

Clifford W. Taylor,
Chief Justice

ADM File No. 2005-37

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendment of
Rules 5.101, 5.105, 5.113,
5.125, 5.206, 5.302, 5.306,
5.307, 5.309, and 5.403
of the Michigan Court Rules

Proposed Adoption of
Rules 5.410 and 5.411 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 5.101, 5.105, 5.113, 5.125, 5.206, 5.302, 5.306, 5.307, 5.309, and 5.403 and adoption of new Rules 5.410 and 5.411 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before final adoption or rejection. The schedule and agendas for public hearings are posted on the Court's website, www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language would be amended as indicated below
by strikeouts and underlining.]

Rule 5.101 Form and Commencement of Action

(A)-(B)[Unchanged.]

(C) Civil Actions, Commencement, Governing Rules. The following actions, must be titled civil actions, must be commenced by filing a complaint, and are governed by the rules which are applicable to civil actions in circuit court:

- (1) Any action against ~~another~~ a nonfiduciary filed by a fiduciary, and
- (2) Any action filed by a claimant after notice that the claim has been disallowed.

Rule 5.105 Manner and Method of Service

(A)-(C)[Unchanged.]

- (D) Service on Persons Under Legal Disability or Otherwise Legally Represented. In a guardianship or conservatorship proceeding, a petition or notice of hearing asking for an order that affects the ward or protected individual must be served on that ward or protected individual if he or she is 14 years of age or older. In all other matters, service on an interested person under legal disability or otherwise legally represented may be made instead on the following:
 - (1) The guardian of an adult, conservator, or guardian ad litem of a minor or other legally ~~disabled person~~ incapacitated individual, except with respect to:
 - (a) a petition for commitment or
 - (b) a petition, account, inventory, or report made as the guardian, conservator, or guardian ad litem.
 - (2) The trustee of a trust with respect to a beneficiary of the trust, except that the trustee may not be served on behalf of the beneficiary on petitions, accounts, or reports made by the trustee as trustee or as personal representative of the settlor's estate.
 - (3) The guardian ad litem of any unascertained or unborn person.
 - (4) A parent of a minor with whom the minor resides, provided the interest of the parent in the outcome of the hearing is not in conflict with the interest of the minor and provided the parent has filed an appearance on behalf of the minor.

- (5) The attorney for an interested person who has filed a written appearance in the proceeding. If the appearance is in the name of the office of the United States attorney, the counsel for the Veterans' Administration, the Attorney General, the prosecuting attorney, or the county or municipal corporation counsel, by a specifically designated attorney, service must be directed to the attention of the designated attorney at the address stated in the written appearance.
- (6) The agent of an interested person under an unrevoked power of attorney filed with the court. A power of attorney is deemed unrevoked until written revocation is filed or it is revoked by operation of law.

For purposes of service, an emancipated minor without a guardian or conservator is not deemed to be under legal disability.

(E) [Unchanged.]

Rule 5.113 Papers; Form and Filing

(A) Form of Papers Generally.

- (1) An application, petition, motion, inventory, report, account, or other paper in a proceeding must
 - (a) be legibly typewritten or printed in ink in the English language, and
 - (b) include the
 - (i) name of the court and title of the proceeding in which it is filed;
 - (ii) case number, if any, including a prefix of the year filed and a two-letter suffix for the case-type code (~~see pursuant to MCR 8.117~~) and according to the principal subject matter of the proceeding, ~~and if the case is filed under the juvenile code, the petition number which also includes a prefix of the year filed and a two-letter suffix for the case-type code;~~

- (iii) character of the paper; and
 - (iv) name, address, and telephone number of the attorney, if any, appearing for the person filing the paper; and
 - (c) be substantially in the form approved by the State Court Administrator, if a form has been approved for the use.
- (2) A judge or register shall not receive and file a nonconforming paper.

(B)-(D)[Unchanged.]

Rule 5.125 Interested Persons Defined

(A) [Unchanged.]

(B) Special Conditions for Interested Persons.

- (1) Claimant. Only a claimant who has properly presented a claim pursuant to MCR 5.306(D) and whose claim has not been disallowed and remains files a claim with the court, with a personal representative, or with a trustee of a trust required to give notice to creditors pursuant to MCL 700.7504, and whose claim remains undetermined or unpaid need be notified of specific proceedings under subrule (C).
- (2) Devisee. Only a devisee whose devise remains unsatisfied need be notified of specific proceedings under subrule (C).
- (3) Trust as Devisee. If either a trust or a trustee is a devisee, the trustee is the interested person. If no trustee has qualified, the interested persons are the current trust beneficiaries and the nominated trustee, if any.
- (4) Father of a Child Born out of Wedlock. Except as otherwise provided by law, the natural father of a child born out of wedlock need not be served notice of proceedings in which the child's parents are interested persons unless his paternity has been determined in a manner provided by law.

- (5) Decedent as Interested Person. If a decedent is an interested person, the personal representative of the decedent's estate is the interested person. If there is no personal representative, the interested persons are the known heirs of the estate of the decedent, the known devisees, and the Attorney General.
- (C) Specific Proceedings. Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:
- (1)-(2)[Unchanged.]
- (3) The persons interested in a petition to determine the heirs of a decedent are the presumptive heirs.
- (4)-(5)[Unchanged.]
- (6) The persons interested in a proceeding for examination of an account of a fiduciary are the
- (a) devisees of a testate estate, and if one of the devisees is a trustee or a trust, the persons referred to in MCR 5.125(B)(3),
 - (b) heirs of an intestate estate,
 - (c) protected person and presumptive heirs of the protected person in a conservatorship,
 - (d) ward and presumptive heirs of the ward in a guardianship,
 - ~~(d)~~(e) claimants,
 - ~~(e)~~(f) current trust beneficiaries in a trust accounting, and
 - ~~(f)~~(g) ~~such~~ other persons whose interests would be adversely affected by the relief requested, including insurers and sureties who might be subject to financial obligations as the result of the approval of the account.

(7)–(25) [Unchanged.]

(26) The persons interested in a petition by a conservator for instructions or approval of sale of real estate or other assets are

- (a) the protected individual and
- (b) those persons listed in subrule (C)(~~23~~24) who will be affected by the instructions or order.

(27) The persons interested in receiving a copy of an inventory or account of a conservator or of a guardian are:

- (a) the protected individual or ward, if he or she is 14 years of age or older and can be located,
- (b) the presumptive heirs of the protected individual or ward, ~~and~~
- (c) the claimants, and
- (d) the guardian ad litem.

(28)–(31) [Unchanged.]

(32) The persons interested in a proceeding affecting a trust other than those already covered by subrules (C)(6) and (C)(28) are:

- (a) the trust beneficiaries affected by the relief requested,
- (b) the current trustee,
- (c) the proposed successor trustee, if any, and
- (d) other persons whose interests are affected by the relief requested.

(D)-(E)[Unchanged.]

Rule 5.206 Duty to Complete Administration

A fiduciary and an attorney for a fiduciary must take all actions reasonably necessary to regularly administer an estate and close administration of an estate. If the fiduciary or the attorney fails to take such actions, the court may act to regularly close the estate and assess costs against the fiduciary or attorney personally.

Rule 5.302 Commencement of Decedent Estates

(A) [Unchanged.]

(B) Sworn Testimony Form. One or more ~~A~~-sworn testimony forms sufficient to establish the identity of ~~interested persons~~ heirs and devisees must be submitted with the application or petition that commences proceedings. ~~The~~ A sworn testimony form must be executed before a person authorized to administer oaths.

(C)-(D)[Unchanged.]

Rule 5.306 Notice to Creditors, Presentment of Claims

(A)-(C)[Unchanged.]

(D) Presentment of Claims. A claim shall ~~may~~ be presented to the personal representative by mailing or delivering the claim to the personal representative or the personal representative's attorney. A claim is presented

- (1) on mailing, if addressed to the personal representative; or the personal representative's attorney ~~or the court~~, or
- (2) in all other cases, when received by the personal representative or the personal representative's attorney ~~court~~.

For purposes of this subrule, personal representative includes a proposed personal representative.

Rule 5.307 Requirements Applicable to all Decedent Estates

- (A) [Unchanged.]
- (B) Notice of Continued Administration. If unable to complete estate administration within one year of appointment, the personal representative must file with the court and all interested persons a notice that the estate remains under administration, specifying the reason for the continuation of the administration. The notice must be given within 28 days of the first anniversary of appointment and all subsequent anniversaries during which the administration remains uncompleted.
- ~~(B)-(D)~~ [Relettered (C)-(E) only.]

Rule 5.309 Informal Proceedings

- (A)-(B) [Unchanged.]
- (C) Notice of Intent to Seek Informal Appointment as Personal Representative.
 - (1) A person who desires to be appointed personal representative in informal proceedings must give notice of intent to seek appointment and a copy of the application to each person having a prior or equal right to appointment who does not renounce ~~waive~~ this right in writing before the appointment is made.
 - (2)-(3) [Unchanged.]
- (D) [Unchanged.]

Rule 5.403 Proceedings on Temporary Guardianship

- (A)-(B) [Unchanged.]
- (C) Temporary Guardian for Incapacitated Individual Where no Current Appointment; Guardian ad Litem. A petition for a temporary guardian for an alleged

incapacitated individual shall specify in detail the emergency situation requiring the temporary guardianship. For the purpose of an emergency hearing ~~for appointment of a temporary guardian of an alleged incapacitated individual~~, the court shall appoint a guardian ad litem unless such appointment would cause delay and the alleged incapacitated individual would likely suffer serious harm if immediate action is not taken. The duties of the guardian ad litem are to visit the alleged incapacitated individual, report to the court and take such other action as directed by the court. The requirement of MCL 700.5312(1) that the court hold the fully noticed hearing within 28 days applies only when the court grants temporary relief.

(D) Temporary Guardian for Minor.

(1) ~~Prior to~~Before Appointment of Guardian. If necessary during proceedings for the appointment of a guardian for a minor, the court may appoint a temporary guardian after a hearing at which testimony is taken. The petition for a temporary guardian shall specify in detail the conditions requiring a temporary guardianship. Where a petition for appointment of a limited guardian had been filed, the court, before the appointment of a temporary guardian, shall take into consideration the limited guardianship placement plan in determining the powers and duties of the parties during the temporary guardianship.

(2) [Unchanged.]

Rule 5.410 Guardian ad Litem for Protected Individual [New Rule]

(A) Appointment. A guardian ad litem shall be appointed in every adult conservatorship with unrestricted assets for the purposes of any hearing held unless the protected individual is represented by his or her own attorney or is mentally competent but aged or physically infirm. A guardian ad litem may be appointed in other proceedings as ordered by the court. A guardian ad litem may be ordered to continue to represent the protected individual during the period of the conservatorship.

(B) Duties. The duties of a guardian ad litem include but are not limited to the following:

- (1) A guardian ad litem shall represent the interest of the protected individual at all times.
- (2) A guardian ad litem shall review the inventory and accountings of a conservator for accuracy and appropriateness.
- (3) A guardian ad litem shall require documentation from a conservator for income and disbursements that the guardian ad litem finds questionable on the inventory or accounting.
- (4) A guardian ad litem shall report to the court or file an objection with the court if the inventory or accounting is not proper.
- (5) A guardian ad litem shall determine if a conservator is properly preserving any estate plan of the protected individual.
- (6) A guardian ad litem shall perform such other duties as may be required by statute, court rule or as may be required to protect the interest of the protected individual.

Rule 5.411 Bond of Conservator [New Rule]

The court may require a bond in all conservatorships in which there are unrestricted assets in the amount the court finds necessary to protect the estate or as required by statute. No bond shall be required of trust companies organized under the laws of Michigan or a bank with trust powers unless the court orders that a bond be required.

Staff Comment: These amendments are published in response to a proposal submitted by the Michigan Probate Judges Association and the State Bar of Michigan's Probate and Estate Planning Section. This was a joint effort to increase the oversight of guardianship and conservatorship proceedings, as well as to improve other procedures in probate court.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2007, at P. O. Box 30052, Lansing, MI 48909, MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2005-37. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 28, 2006

Corbin R. Davis
Clerk